

RESTRICTIVE COVENANT AMENDMENT REVIEW SHEET

CASE: C14-85-339(RCA) / East Yager Lane Restrictive Covenant Amendment

ZAP DATE: July 7, 2009
May 5, 2009
April 7, 2009
March 17, 2009
March 3, 2009

ADDRESS: 400 – 900 Block of East Yager Lane

OWNER: Allen Samuels Realty, (Jeff Wooley) (254) 761-6800
Solo Star Realty Inc., (John McCormack) (713) 935-4418
Burton Landing L.L.C. (Robert S. Peek, Jr. (225) 924-3300
Austin Korean Presbyterian Church

AGENT: Armbrust & Brown (Amanda Morrow) 512-435-2368

ZONING: LO / LR / MF-2 / SF-6

SITE AREA: 101.79 acres (4,433,972.4 sq. ft.)

SUMMARY STAFF RECOMMENDATION: Staff recommends the Applicant's request to amend the Restrictive Covenant to combine Section 3 and Section 4 which will identify the specific areas that will be dedicated as parkland at the time of preliminary plan approval. In addition, staff has an alternate recommendation to deleting the requirement to construct a four-lane highway. Staff's alternative amendment will revise Section 8 of the Restrictive Covenant to state a residential collector with 60 feet of right-of-way and 40 feet of pavement shall be provided as generally described on Exhibit "C".

ZONING AND PLATTING RECOMMENDATION: Pending. This case is scheduled for the Zoning and Platting Commission meeting of July 7, 2009. (This case was postponed by staff on March 3, 2009, by the applicant on March 17, 2009, jointly by the staff and applicant on April 7, 2009 and by the applicant on May 5, 2009).

ISSUES: The Applicant is in agreement with the staff's recommendations pertaining to parkland and right-of-way section.

The Copperfield Neighborhood Organization and the Friends of Copperfield Nature Trails are in support of the Applicant's request.

DEPARTMENT COMMENTS: This Restrictive Covenant was executed in conjunction with a 1985-1987 rezoning request (C14-85-339). This Restrictive Covenant encumbers approximately 101.79 acres of land. This amendment is requested for a 58.702 acre tract and it is zoned LO, LR, MF-2 and SF-6.

The restrictions listed under Section 3 and Section 4 of the Covenant requires land east of the drainage easement on Block B, Lot 7 and Block B, Lot 8 to be dedicated to the City prior to a Certificate of Occupancy to comply with the Parkland Ordinance. However, the Restrictions do not include an exhibit that identifies the area that will be dedicated to the city. The proposed amendment

will identify the specific areas which will be dedicated as parkland at the time of preliminary plan approval.

In addition, the restriction listed under Section 8 of the Covenant requires the owner to construct a four-lane divided roadway, with 90 feet of right-of way. The applicant maintains that since the Covenant was recorded there have been numerous roadway improvements that have occurred in the area. Therefore, it is the applicant's desire to develop the property with a less intense use than the existing MF-2, LO and LR zoning districts (there is a pending rezoning application to rezone this area to SF-6 under case number C14-2008-0193) and to delete the large roadway section. Staff understands the applicant's concerns, and the alternative recommendation is a residential collector with 60 feet of right-of-way and 40 feet of pavement shall be provided as generally described on Exhibit "C" (which is forthcoming). The staff position is that a collector street is necessary to provide the connectivity from IH-35 to Yager Lane, and the collector section is a more appropriate roadway section for the uses in the area.

The staff recommendation is to approve the requested Restrictive Covenant Amendment that will dedicate specific areas to parkland and reduce the size of the right-of-way.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	LO / LR / MF-2	Undeveloped
<i>North</i>	P / MF-2 / SF-6	Undeveloped / Apartments
<i>South</i>	SF-2	Single-family residences
<i>East</i>	DR / SF-2	Town homes / Single-family residences
<i>West</i>	GO / GR-CO / MF-3-CO	Apartments / VFW Hall / Undeveloped

NEIGHBORHOOD PLAN AREA: The property does not lie within a designated neighborhood planning area.

WATERSHED: Walnut Creek

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: No

SCENIC ROADWAY: No

NEIGHBORHOOD ORGANIZATIONS:

Home Builders Association of Greater Austin
 Northeast Walnut Creek Neighborhood Assn.
 North Growth Corridor Alliance
 Austin Neighborhoods Council
 Homeless Neighborhood Organization
 Yager Planning Area
 NorthEast Action Group

SCHOOLS:

Austin Independent School District
 Graham Elementary School Dobie Middle School Reagan High School

CASE HISTORIES:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-03-0151 – 12301 BLOCK OF N I 35 SVC RD NB – ALLEN SAMUELS DODGE	From GO and LO to GR	12/2/2003 APVD STAFF ALT REC OF GR-CO W/CONDS (6-0-3, JM/MW/BB-ABSTAIN) The CO limits vehicle trips to 2,000 per day and Prohibits: Cultural Services, Daycare Services (Commercial, General, Limited), Guidance Services, Hospital Services (Limited), Local Utility Services, Private Primary and Secondary Educational Facilities, Public Primary and Secondary Educational Facilities, College and University Facilities, Communication Service Facilities, Community Recreation (Private, Public) Congregate Living, Residential Treatment, Safety Services, Art and Craft Studio (Limited), Business or Trade School, Business Support Services, Communication Services, Drop-Off Recycling Collection Facility, Exterminating Services, Financial Services, Food Sales, Funeral Services, General Retail Sales (Convenience, General), Indoor Entertainment, Indoor and Outdoor Sports and Recreation, Medical Offices, Pawn Shop Services, Personal Improvement Services, Personal Services, Pet Services, Professional Office, Research Services Restaurant (Drive-In, Fast Food, Limited and General) Service Station Software Development, Theater, Hospital Services (General), Club or Lodge, Outdoor Entertainment, Plant Nursery, Special Use Historic.	1/8/2004 APVD GR-CO (7-0); ALL 3 RDGS [HOTEL/MOTEL ADDED TO LIST OF PROHIBITED USES]
C14-00-2084 – 500 VFW RD – V.F.W. POST	From DR to GR	6/27/2000 APVD STAFF REC of GO- CO, w/2,000 vehicle trips per day limit BY CONSENT (9-0)	8/3/2000 APVD GO-CO ON ALL 3 RDGS (7-0)
C14-00-2150 – 305 E YAGER LN – CANYON RIDGE APARTMENTS	From GO,GR to MF-3	8/29/2000 APVD STAFF REC W/CONDITIONS OF NO MORE THAN 18 UNITS PER ACRE, 2000 VEHICLE TRIP LIMITATION (5-1, RV-NAY)	10/5/2000 APVD MF-3-CO (5-0) ALL 3 RDGS

TRANSPORTATION

Existing Street Characteristics:

Name	ROW	Pavement	Classification	Daily Traffic
East Yager Lane/ Canyon Ridge Drive	80'	33'	Collector	10,112 (COA, 2008)
Peggotty Place	64'	41'	Collector	Not available
Olmos Drive	50'	Varies	Local	Not available
VFW Road	70'	Varies	Collector	Not available

Staff Recommendation: Right-of-way for the proposed Park North Drive should be reduced to neighborhood collector standard (64' wide). Connectivity is needed in accordance with § 25-4-157(B) which requires a new subdivision to connect to at least two access streets. In addition, each of the two access streets must connect to a different external street. Connectivity is also needed to provide emergency access.

A traffic impact analysis was submitted in support of the related zoning case (City of Austin case number C14-2008-0193). A traffic impact analysis was not required for this case because the traffic generated by the proposed restrictive covenant amendment does not exceed the threshold of 2,000 vehicle trips per day [LDC, 25-6-113].

There are no existing sidewalks along East Yager Lane.

East Yager Lane is classified in the Bicycle Plan as a Priority 1 bike route (route #8).

Capital Metro bus service (route no. 392) is available along East Yager Lane.

RELATED CASES: C14-85-339 – Original Rezoning Case

CITY COUNCIL DATE:

April 2, 2009

ACTION:

This item was postponed to May 14, 2009 at the applicant's request on consent on Council Member Morrison's motion, Council Member Leffingwell's second on a 7-0 vote.

May 14, 2009

ORDINANCE READINGS: 1st 2nd 3rd

ORDINANCE NUMBER:

CASE MANAGER: Joi Harden

PHONE: 974-2122

E-MAIL: joi.harden@ci.austin.tx.us;

RESTRICTIVE COVENANT

4 22 9897

THE STATE OF TEXAS
COUNTY OF TRAVIS

§ KNOWN ALL MEN BY THESE PRESENTS:

WHEREAS, VCMS INVESTMENTS of Travis County, Texas, is Owner
of the following described property ("Property"):

2:14 PM 6/6/87

47.00 INDX
3 3 05/14/87
6353.57-CHK#
.99-0004

All that certain tract, piece or parcel of land, lying
and being situated in the County of Travis, State of
Texas, described in Exhibit "A" attached hereto and
made a part hereof for all purposes, to which refer-
ence is here made for a more particular description of
said property;

and,

WHEREAS, the City of Austin, Texas, and the Owner of the
Property have agreed that the Property should be impressed with
certain covenants and restrictions running with the land, and
desire to set forth such agreement in writing;

NOW THEREFORE, in consideration of One and No/100 Dollars
(\$1.00) and other good and valuable consideration paid by the
City of Austin in hand to the Owner, the receipt and sufficiency
of which is acknowledged, the Owner does hereby impress upon the
Property, the following covenants and conditions which shall be
considered to be covenants running with the land, and which shall
be binding on the Owner, its successors and assigns, as follows:

1. A site plan will be submitted to the City on each lot and
will be reviewed under Section 6100 et seq. of Chapter 13-2A of
the City Code of 1981, as amended.
2. Each site plan will be accompanied by a supplemental traffic
report which examines local driveway and curb cut designs, signal
warrants, intersection operations and other necessary transporta-
tion conditions in the immediate local vicinity of the site and
must be approved by the Director of the Office of Land Develop-
ment Services prior to the issuance of a building permit for the
development sites covered by each site plan. The Thirty-Five
North development shall provide fiscal participation based on a
pro rata share of site traffic in intersection improvements
identified in the traffic report.
3. The area east of the drainage easement on Block B, Lot 7
will be dedicated to the City prior to the issuance of a certifi-
cate of occupancy to comply with the Parkland Ordinance.
4. Additional land from Block B, Lot 8, as noted in condition
3, will be dedicated to the City prior to the issuance of a
certificate of occupancy to comply with the Parkland Ordinance.
5. Lot 5, Block B (as designated in Exhibit "A") shall be limited
to a maximum of six units per acre.
6. There shall be no structures on the Property with glass having
a reflectivity of greater than twenty (20) percent.
7. All intersection impacted by the Thirty-Five North project must
operate at no less than a level of Service D after site generated
traffic is added to the traffic existing as of the date of the
traffic report.
8. Owner will revise the final plat of Thirty-Five North (subdi-
vision City of Austin case number C8-85-127) as a four-lane divided
roadway, with 90 feet of right-of-way.

REAL PROPERTY RECORDS
Travis County, Texas

10252 0088

85-339

9. If any person or entity shall violate or attempt to violate the foregoing agreement and covenant, it shall be lawful for the City of Austin, a municipal corporation, its successors and assigns, to prosecute proceedings at law or in equity, against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.

10. If any part of this agreement or covenant shall be declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.

11. If at any time the City of Austin, its successors or assigns, fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.

12. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, or such other governing body as may succeed the City Council of the City of Austin, and (b) by the owner(s) of the Property at the time of such modification, amendment or termination.

EXECUTED this the 5 day of MARCH, 1987.

VCMI INVESTMENTS

BY:VCMI Corporation, Partner

Vance C. Miller
BY: Vance C. Miller
VCMI Corp., President

THE STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on March 5, 1987, by Vance C. Miller, President of VCMi Corporation, a Texas Corporation, on behalf of said corporation, and the corporation acknowledged this instrument as partner on behalf of VCMS INVESTMENTS, a partnership.

M. Louise LaRo
Notary Public, State of Texas
M. Louise LaRo
Notary's Name (Printed)

Notary's commission expires 2-2-88 NOTARY SEAL



SCALE: 1" = 400'

YAGER LANE

35'

INTERSTATE HIGHWAY 35 NORTH

100' LCRA ELECTRIC TRANSMISSION ESMT.

PROPOSED PARKLAND TO BE
DEDICATED TO THE CITY OF
AUSTIN AT PRELIMINARY PLAN
APPROVAL.

EXHIBIT "B"



**PAPE-DAWSON
ENGINEERS**

7800 SHOAL CREEK BLVD.
SUITE 220 WEST
AUSTIN, TEXAS 78757
512-454-8711
FAX 512-450-8867



January 11, 2009

Joi Harden
Neighborhood Planning and Zoning Department
505 Barton Springs, 5th Floor
Austin, Texas 78701

Dear Joi Harden,

I am writing to express my support for the application to amend the Restrictive Covenant, City File # C14-85-339 submitted by Amanda Morrow on behalf of Solo Star Realty, Inc.

The Friends of Copperfield Nature Trails formed in 2006 to improve the Walnut Creek greenbelt surrounding our neighborhood. As an Adopt-a-Park partner with City of Austin Parks Department, we have created trails through the existing greenbelt that adjoins this property along Walnut Creek.

This developer's attention to their property's natural features and potential for trails is evident in their parkland dedication. The area to be dedicated for park purposes allows a trail entrance at Peggotty as well as a connection to Yager Lane on the west side of our neighborhood. This benefits all area residents by increasing access to the trails, greenbelt, and Walnut Creek. Additionally, the parkland dedication allows this segment of trail to connect to a larger Walnut Creek trail system proposed by Parks Department.

In conclusion, I fully support their desire to combine Section 3 and 4 of the restrictions to clarify the parkland dedication as shown on Exhibit "B" submitted to you on December 30, 2008. If you have questions or need further clarification, please contact me.

Sincerely,

Alice Penney, Coordinator
alicepenney@sbcglobal.net
1411 Alma Drive
Austin, Texas 78753
512-835-2401

cc: Amanda Morrow, Armbrust & Brown, LLP (via email)
Ricardo Soliz, City of Austin Parks Planning (via email)



Copperfield Neighborhood Organization

Steering Committee

March 9, 2009

Mike Dunn, *Chairperson*

Jocelyn Doherty,
Treasurer

Cindy Metcalf, *Fun Club*

VACANT,
Beautification

VACANT, *Code
Education*

Stacy & Jim Sass, *Safety*

Judith Ruder, *Membership,
Communications & Planning*

Joi Harden, Case Manager
Watershed Protection and Development Review
City of Austin
505 Barton Springs Road, 5th Floor
Austin, Texas 78704

Re: Rezoning Case Number: C14-2008-0193 and
Restrictive Covenant Amendment Case Number: C14-85-339(RCA)

Dear Ms. Harden,

On behalf of the Copperfield Neighborhood Organization, this letter is to inform you that we support the proposed rezoning case number C14-2008-0193 and the restrictive covenant amendment case number C14-85-339(RCA) for the property located at the 500 block of VFW Road in Austin, Texas 78753. Our neighborhood association has worked closely with the landowner on the specifics of this project.

We understand that the proposed project will rezone the property from MF-2, L.O and LR to SF-6 to create a residential development. Furthermore, we understand that this zoning request will downzone the property, and apartment use will no longer be allowed on the property. The zoning change will also provide an appropriate transition from more intense uses along IH-35 and our subdivision.

We also understand that the landowner proposes to amend the public restrictive covenant that affects that property. The proposed amendment will:

- a) delete the requirement to construct a four-lane divided roadway, with 90 feet of right-of-way through the landowners property,
- b) identify the specific parkland area, which will result in a significant amount of parkland that will be dedicated to the City of Austin, and
- c) resolve the ambiguity of the restrictive covenant as it relates to an unrecorded final plat.

page 1 of 2

1006 East Vacer Lane, Suite B201, Austin Texas 78753
Copperfield@CoCare.biz (512) 836-2600

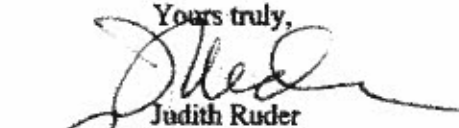
Copperfield Neighborhood Organization

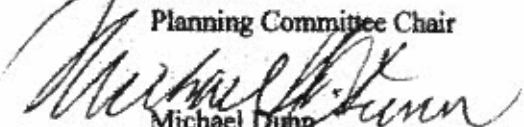
Over the past several months, members of our association, the City of Austin Parks Department, Friends of Copperfield Nature Trail, and the landowner have worked closely to identify specific areas of the property that should be dedicated as parkland. This resulted in the dedication of over 18 acres of parkland to the City of Austin. As we understand and have agreed, the area that will be dedicated encompasses the most environmentally sensitive areas of the property, and provides a greenbelt buffer along the entire east and south boundaries thereof.

Because of the benefits this property will provide to not only our subdivision, but the community as a whole, it is with great pleasure that I inform you that our association is in support of case numbers C14-2008-0193 & C14-85-339(RCA).

We look forward to working with you to ensure that this project is a success. We also hope that the Zoning and Platting Commission and City Council work diligently with the landowner to ensure a successful development as we feel this project will add value to our neighborhood. Please feel free to contact us with any questions.

Yours truly,


Judith Ruder
Planning Committee Chair


Michael Dunn
CNO Chair

CC: Amanda Morrow
Land Development Consultant
Armbrust & Brown, L.L.P.

PUBLIC HEARING INFORMATION

This zoning/rezoning request will be reviewed and acted upon at two public hearings: before the Land Use Commission and the City Council. Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During its public hearing, the board or commission may postpone or continue an application's hearing to a later date, or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

During its public hearing, the City Council may grant or deny a zoning request, or rezone the land to a less intensive zoning than requested but in no case will it grant a more intensive zoning.

However, in order to allow for mixed use development, the Council may add the MIXED USE (MU) COMBINING DISTRICT to certain commercial districts. The MU Combining District simply allows residential uses in addition to those uses already allowed in the seven commercial zoning districts. As a result, the MU Combining District allows the combination of office, retail, commercial, and residential uses within a single development.

For additional information on the City of Austin's land development process, visit our website:

www.ci.austin.tx.us/development

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the board or commission's name, the scheduled date of the public hearing, and the Case Number and the contact person listed on the notice.

Case Number: C14-2008-0193 & C14-85-339 CRCA)
Contact: Joi Harden,, (512) 974-2122
Public Hearing:
March 3, 2009 Zoning and Platting Commission
April 2, 2009 City Council

<input checked="" type="checkbox"/> I am in favor
<input checked="" type="checkbox"/> I object
<i>to Board</i>
<i>4 lane deletion</i>

JAMES BURMEISTER
Your Name (please print)

1015 E. YAGER LANE, #515157, AUSTIN

Your address(es) affected by this application

JAMES BURMEISTER

Signature

2/24/09

Date

Comments: *I am in favor of the rezoning to Townhome & Condo district. I do not approve of amendment to delete Section 8 of the restrictions which will remove requirement to construct a 4 lane divided road. Traffic is horrible, the Condo if built will cause more traffic so a 4 lane divided Road should be built.*

If you use this form to comment, it may be returned to:

City of Austin
Neighborhood Planning and Zoning Department
Joi Harden,}
P. O. Box 1088
Austin, TX 78767-8810